

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: . Case No. 09-50026-mg
MOTORS LIQUIDATION COMPANY, . Chapter 11
Debtors. . One Bowling Green
New York, NY 10004
Thursdays, May 30, 2019
3:04 p.m.
.

TRANSCRIPT OF MOTION TO AUTHORIZE BY GENERAL MOTORS LLC TO
ENFORCE THE BANKRUPTCY COURT'S JULY 5, 2009 SALE ORDER AND
INJUNCTION AND THE RULINGS IN CONNECTION THEREWITH, WITH
RESPECT TO KIMBERLY MCCALL AND TAMMY MCCALL
(CC: DOC # 14477, 14509, 14515)

**BEFORE THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY COURT JUDGE**

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1 (Proceedings commence at 3:04 p.m.)

2 THE COURT: May I have the appearances, please, first
3 for Motors Liquidation.

4 MR. STEINBERG: Good afternoon, Your Honor. Arthur
5 Steinberg from King & Spalding on behalf of New GM. And next
6 to me is Michael Bell from the Lightfoot firm, who is the
7 Alabama trial counsel in this matter.

8 THE COURT: Okay. Thank you.

9 MR. SNYDER: Your Honor, good afternoon. Eric
10 Snyder, Wilk Auslander, for Tammy and Kimberly McCall. With me
11 is my associate, Eli Peral, and Josh Hayes, who is one of the
12 Alabama counsels in the --

13 THE COURT: All right. Thank you.

14 MR. SNYDER: -- Alabama proceeding.

15 THE COURT: Mr. Steinberg, you can argue.

16 MR. STEINBERG: Your Honor, this motion to enforce
17 essentially boils down to one issue, which is whether under
18 Section 2.3(a)(9) of the sale agreement, New GM contractually
19 assumed the punitive damage liability of Old GM. And as Your
20 Honor knows, that the default provision on the sale agreement
21 under Section 2.3(b) is that if you don't specifically find
22 yourself in the assume liability section of the sale agreement,
23 meaning that it's not specifically mentioned, then the default
24 mechanism of that it is a retained liability of Old GM.

25 Here, the McCalls are only pointing to Section



1 2.3(a)(9), so I think the issue has been narrowed to whether --
2 THE COURT: Hang on just a second. Whoever is on the
3 phone, would you put your phone on mute, please?

4 Go ahead, Mr. Steinberg.

5 MR. STEINBERG: So here the only section that they're
6 pointing to in the assumed liability of the sale agreement is
7 Section 2.3(a)(9), and they're arguing solely a contractual
8 assumption theory. So the issue is whether Section 2.3(a)(9)
9 had New GM assuming punitive damage liability for the Alabama
10 wrongful death claim.

11 And there are at least four decisions that emanated
12 from the General Motors case where the Court has looked at
13 Section 2.3(a)(9) and has determined that there was no
14 contractual assumption of punitive damage liability. The first
15 decision was Judge Gerber's decision in November of 2015 where
16 he went through a textual analysis of Section 2.3(a)(9) and
17 said that New GM did not assume the punitive damage liability
18 based on Old GM conduct.

19 And then the second was Your Honor's July 2017
20 decision, which related to the 2016 threshold issues, where
21 Your Honor said that Judge Gerber's decision was the law of the
22 case for this matter. And as a matter of bankruptcy law, since
23 Old GM is an insolvent seller, would not have been liable for
24 punitive damages, neither would New GM as the purchaser in a
25 363 sale.



1 THE COURT: And the McCalls argue at a footnote that
2 that decision was incorrect because Section 726 of the
3 Bankruptcy Code deals with Chapter 7 cases, not Chapter 11
4 cases. Could you just address that briefly?

5 MR. STEINBERG: Sure. Section -- in effect, the
6 subordination of punitive damages is in the Chapter 7 of the
7 Bankruptcy Code, but in Chapter 11, they incorporate the best
8 interest test. And the decisions in this area have adopted the
9 Chapter 7 rationale and applied it to the Chapter 11 cases.

10 THE COURT: And in this, the best interest wouldn't
11 be satisfied if you give -- if punitive damages were paid out.
12 Creditors would not recover -- unsecured creditors would not
13 recover as much as they would have in a liquidation.

14 MR. STEINBERG: And the reality was, in the Old GM
15 bankruptcy plan, punitive damages didn't get any recovery.

16 THE COURT: Okay.

17 MR. STEINBERG: And the third was -- and Your Honor
18 wrote another decision in August of 2017 in the Reichwald
19 matter where Reichwald was a plaintiff, like, from Georgia and
20 argued that he was not bound by Your Honor's July 2017
21 decision. Reichwald had not appealed that decision, and Your
22 Honor had decided that Reichwald was bound on res judicata
23 principles. But in the context of that decision, Your Honor
24 noted that you agreed with Judge Gerber on his contractual
25 interpretation of Section 2.3(a)(9).



1 And then the Reichwald decision and Your Honor's 2016
2 decision went up to Judge Furman on appeal. And Judge Furman
3 affirmed you both --

4 THE COURT: That's on further appeal.

5 MR. STEINBERG: Right. It's now on further appeal.
6 But right now, the state of the record is that you have been
7 affirmed. Judge Gerber's decision was never appealed.

8 THE COURT: Do I need to reach the issue here? It's
9 on appeal. I mean, I was affirmed by Judge Furman, but the
10 issue has gone before the Second Circuit. Do I need to reach
11 the issue here?

12 MR. STEINBERG: You do in that they are moving
13 forward in their Alabama case, asserting the punitive damage
14 liability without regard to all of these decisions, which we
15 say is a violation of Your Honor's --

16 THE COURT: Well, do I need to reach the issue of
17 whether the priority scheme of the Bankruptcy Code precludes
18 the availability of punitive damages?

19 MR. STEINBERG: I think it's the law of the case
20 already, and I think they're bound by res judicata principles.

21 THE COURT: Yeah, but my question was a different
22 one. Can I decide the issues -- can I decide it as purely a
23 contractual --

24 MR. STEINBERG: Sure.

25 THE COURT: -- issue without having to decide the



1 issue of whether res judicata, law of the case, whether I was
2 right, whether I was wrong?

3 MR. STEINBERG: Yes.

4 THE COURT: Okay. Let me ask you --

5 MR. STEINBERG: They are not arguing a successful
6 liability theory. They're arguing strictly that the section --
7 the provision of the sale agreement provided for the
8 contractual assumption of a liability. So Your Honor clearly
9 can decide, which I think you have previously interpreted, as
10 well as Judge Gerber, that on a contractual assumption basis,
11 there is no assumption of the punitive damage liability.

12 THE COURT: Let me ask -- I have some questions I
13 wanted to ask you. Okay.

14 In Paragraph 59 of your motion, you state that,
15 quote, "The McCalls also assert claims for personal injuries
16 arising from the accident. These claims, as phrased in the
17 McCall complaints, are Product Liabilities" -- and those are
18 initial caps -- "as defined in the sale agreement as amended.
19 As such, to the extent the McCalls can establish liability with
20 respect to the assumed product liabilities, they could obtain
21 compensatory damages from New GM."

22 Does this mean that the plaintiffs may recover
23 compensatory damages for product liabilities on behalf of the
24 deceased?

25 MR. STEINBERG: No. No, but there are other



1 defendants in the litigation. People were passengers in the
2 vehicle.

3 THE COURT: Okay.

4 MR. STEINBERG: And they are seeking compensatory
5 damages there.

6 THE COURT: So is it your argument that the
7 plaintiff's only remedy where a person has died, caused by a
8 defective product, is for his estate representative to recover
9 punitive damages under the Alabama Wrongful Death Act? In
10 other words, the estate representative cannot maintain a
11 negligence or breach of warranty or any product liability claim
12 seeking compensatory damages. Is that your position?

13 MR. STEINBERG: May I ask my Alabama counsel who is
14 trying the matter?

15 THE COURT: Yes. Mr. Bell?

16 MR. STEINBERG: Mike, do you want to just address?

17 MR. BELL: Mike Bell --

18 THE COURT: Go up to the mike.

19 MR. BELL: -- from the Lightfoot Franklin firm, Your
20 Honor.

21 THE COURT: Good afternoon.

22 MR. BELL: Good afternoon. It's a pleasure to be
23 here. It's much cooler.

24 A personal representative can pursue, under product
25 liability theories, a compensatory damage claim. It's called



1 Aquaslide claim.

2 THE COURT: I know -- I've read Aquaslide.

3 MR. BELL: Okay. It --

4 THE COURT: And I've got some more questions about it
5 I'll ask you. But go ahead and finish reading.

6 MR. BELL: If there's a period of survival, they're
7 able to do that.

8 THE COURT: That was part of my question. Okay. So
9 maybe I didn't bring all the cases out, but I've been reading
10 Alabama cases for the last couple of days. Yes, I do have
11 Aquaslide. Aquaslide is 406 So.2d 873 (1981).

12 So as I understand it, first of all, breach of
13 warranty claims includes implied warranty, fitness for its
14 defective purpose. Essentially, your argument is that the
15 vehicle because of the position of the gas tank or whatever was
16 not fit for the purpose. It blew up when it was hit, it's
17 essentially right. Is that correct?

18 MR. BELL: That would be the claim, right.

19 THE COURT: The complaint does not -- the complaint
20 you filed does not assert a breach of warranty claim.

21 MR. STEINBERG: It's not an open point. They're the
22 defense.

23 MR. BELL: I'm on the GM side.

24 THE COURT: I'm sorry. The complaint that was filed
25 does not assert a breach of warranty.



1 MR. BELL: It does not. That's right.

2 THE COURT: And the Alabama Supreme Court has said
3 that breach of warranty is a contract claim, correct?

4 MR. BELL: Correct.

5 THE COURT: And it survived -- and when the statute on
6 survival has now been interpreted, they reversed earlier
7 decisions, and breach of contract claim survives the death of
8 person who was injured or killed by the defective product.

9 MR. BELL: That's right. There is that ability to
10 make that claim if you meet the factors.

11 THE COURT: And what I've been trying to figure out
12 is whether the estate -- whether an estate representative --
13 whether this one was (indiscernible) can assert a breach of
14 warranty claim and recover compensatory damages. And I know
15 compensatory damages are recoverable. Are compensatory damage
16 -- I couldn't find any cases that said that compensatory
17 damages are cutoff by death.

18 MR. BELL: The practice or the understanding under
19 Alabama law that we operate under is the Aguaslide claims can
20 be made for a period of survival for pain and suffering, for
21 mental anguish, and those sorts of things only.

22 THE COURT: Is there a case that says that?

23 MR. BELL: There has to be because --

24 THE COURT: I can't find it.

25 MR. BELL: Let me -- Chandler v. Ensley, methyl ethyl



1 ketone peroxide was the chemical involved. It's a case from
2 before I was a lawyer, about '85, and it's Chandler v. Ensley.
3 It was a -- UNITED STATES was a party. I think that case
4 actually dealt with that issue.

5 THE COURT: And I've seen where cases say that from
6 the time of the injury until death, compensatory damages are
7 recoverable, but they don't say it's not recoverable after. So
8 for example, are there any Alabama cases that say that
9 compensatory damages for future earnings are cutoff by death,
10 or is -- do you look at the expected working life of the
11 decedent, and you've got a statute?

12 Alabama Code 1975 Section 6-11-1, "In any civil
13 action based upon tort and any action for personal injury based
14 upon breach of warranty, except actions for wrongful death,"
15 and gives the sections, "the damages accessed by the fact-
16 finder shall be itemized as follows: one, past damages; two,
17 future damages; three, punitive damages. The fact-finder shall
18 not reduce any future damages to present value. Where the
19 Court determines that any one or more of the above categories
20 is not recoverable in the action, those categories shall be
21 omitted from the itemization."

22 What I haven't -- there may -- I'm not an Alabama
23 lawyer. I haven't seen any cases that say future wages are
24 cutoff by death if, but for the accident, the decedent would
25 have been expected to work for another 20 years, and a jury is,



1 you know, asked to calculate what their future wages that
2 they've lost would be, are there cases that say, no, you don't
3 do that?

4 MR. BELL: They can't do it. For 31 years of trying
5 wrongful death cases, I've never had a single claim for lost
6 wages because it's -- Alabama has taken the policy decision
7 under the Wrongful Death Act to make it a punitive damage claim
8 only, with the Aquaslide --

9 THE COURT: That's limited to torts. Aquaslide --

10 MR. BELL: Aquaslide.

11 THE COURT: -- says that the Wrongful Death Act
12 is -- applies only to tort, and the breach of warranty claim
13 that the Supreme Court of Alabama said is contract. And so the
14 Wrongful Death Act doesn't apply to it.

15 You know this stuff better than I do, but I've been
16 looking, and I can't find something that -- I'm not saying it
17 isn't there, but I can't find it.

18 MR. BELL: Josh Hayes, who is a plaintiff lawyer in
19 our state, who is representing the parties in this case, he can
20 correct me if I'm wrong, but in a wrongful death case, even
21 with a period of survival for an Aquaslide claim, it is
22 considered a tort claim. It is simply you get the mental
23 anguish, the pain and suffering for that moment of survival, if
24 an Aquaslide claim is made. Otherwise, it's limited to
25 punitive damages. There's never been -- there's not a vehicle



1 under Alabama law at all to allow a true lost --

2 THE COURT: Well, but that's -- you're saying it's a
3 tort claim then. But your Supreme Court has clearly said that
4 breach of warranty claim, compensatory damages, if they
5 survive, if someone survives the crash, damages are
6 compensatory damages and punitive damages, but let's put
7 punitive damages aside, compensatory damages are recoverable
8 for breach of warranty, a contract claim, where their -- an
9 injury is resulting from a defective product. You know, it
10 satisfies the requirements of -- wasn't fit for its intended
11 purpose, etc. Is that true?

12 MR. BELL: The only part that I'm not clear on is
13 whether it's truly a contract claim versus a tort claim. We've
14 always treated it as a tort claim.

15 THE COURT: The cases I read clearly said it's a
16 contract claim.

17 MR. BELL: And really, I wish I read Chandler v.
18 Ensley, and the reason I said methyl ethyl ketone peroxide,
19 it's an easy word to word search with Westlaw. But that case,
20 there was a claim, a breach of warranty claim under Aquaslide
21 and a death claim. These gentlemen survived for 30 seconds in
22 a big tank where there was a flash fire. In fact, one of them
23 lived for several days, as I recall.

24 MR. STEINBERG: Your Honor, your questions are
25 obviously important to give you a fuller --



1 THE COURT: Well, let me give you a fuller idea of
2 why I'm asking these questions. Okay.

3 So Judge Bernstein's decision in Old Carco is on
4 appeal before Judge Nathan in the district court. The Alabama
5 attorney general filed an amicus brief in that case. And
6 first, as the solicitor general of Alabama argues, that
7 punitive damages doesn't mean the same thing in the
8 wrongful -- Alabama wrongful death statute that it means
9 elsewhere. I'm skeptical of that argument. The pattern jury
10 instruction, which you attached, like every other pattern jury
11 instruction on punitive damages I've seen, it's punishment, not
12 compensatory. But the Alabama attorney general has argued on
13 appeal from the Old Carco decision. It's Docket Number
14 18-CV-11290. If you haven't -- have you read it,
15 Mr. Steinberg?

16 MR. STEINBERG: I did when we filed the first motion.
17 I looked at all the briefing that was going up on appeal.

18 THE COURT: And it's Document Number 16 on the
19 district court docket. And this brief argues that, quote,
20 "Alabama's wrongful death damages are not punitive as that term
21 is used in the sale order, referring to the Chrysler sale
22 order." And I understand the argument to be the proper
23 construction of the statute does not use the term "punitive
24 damages" in the same way as has been used and applied in the
25 Chrysler and General Motors bankruptcy cases. And I must say,



1 it seems to me the Alabama pattern jury instruction that you
2 attached strongly refutes the attorney general's argument.

3 But be that as it may, I'm asking myself -- if I rule
4 in your favor, there's going to be an appeal, and the Alabama
5 attorney general is going to file another brief that probably
6 looks just like the one he filed in Old Carco. And nobody's
7 addressed -- it's similar to the arguments that are made here.
8 Not precisely the same.

9 And so I have that question.

10 MR. STEINBERG: May I just say one thing before you
11 go to the next question?

12 THE COURT: Go ahead.

13 MR. STEINBERG: When you read the response to our
14 motion to enforce, they don't make the argument that you're
15 referring to that the Alabama solicitor general made or that
16 was made in Chrysler Overton. They don't try to quibble
17 whether punitive damages were really some quasi-compensatory
18 damage type issue. They are saying that it is improper as a
19 matter of contractual assumption, fundamental fairness, and
20 public policy. So they're not making the distinction that is
21 troubling, Your Honor. That is why our papers didn't apply to
22 argument that was not made.

23 Now, there's obviously a technical argument that if
24 they haven't made the argument, it's abandoned. But Your Honor
25 has --



1 THE COURT: I can read the briefs in the district
2 court now, Mr. Steinberg.

3 MR. STEINBERG: Right. But Your Honor reviews these
4 issues not just for the particular plaintiff but because there
5 could be another Alabama plaintiff down the road, and you would
6 want it to be as comprehensive as possible.

7 The only thing that I could suggest is that to the
8 extent that we are not fully sanguine on the research for the
9 particular questions that you're asking under Alabama law, and
10 I'd assume the other side will ask for the same thing, to
11 prepare, you know, simultaneous briefs and submit it within a
12 week's period to --

13 THE COURT: That's the rest of my note.

14 MR. STEINBERG: Yeah. Okay. I'm just saying to Your
15 Honor that I understand the issue. I was just trying to
16 explain why we didn't fully address it because we didn't think
17 it was relevant to this issue, but I understand that it could
18 be relevant in other Alabama type cases. And certainly
19 relevant because Your Honor is considering it.

20 Now, you were going to ask another question, and I
21 interrupted, so I apologize for that.

22 I will say, as you're looking at your notes, that we
23 understand that we have an appeal in the Second Circuit on
24 punitive damages issue with regard to your 2017 decisions. We
25 have --



1 THE COURT: You know, actually I don't worry about
2 appeals very much. I'll either get affirmed or reversed, so
3 that's one --

4 MR. STEINBERG: Right. And the res judicata doctrine
5 is that it's res judicata unless it's overturned on appeal, and
6 we believe it's only relevant to the people generally who took
7 the appeal, although that is an issue that people could debate.

8 But the reality is, is that in the context of this
9 case, they're about to -- they finished a mediation, which
10 failed. We obviously didn't want to bring this to Your Honor's
11 attention if we thought this case could be settled because we
12 have settled -- we're ten years past the sale order. We have
13 settled every Alabama Wrongful Death Act case that came up in
14 some type of resolution, so that this issue didn't have to be
15 teed up this way.

16 It is an interesting issue, but they want to go to
17 the next phase of discovery, which is expert discovery on the
18 punitive damage issue, and they were unprepared to stay the
19 matter to allow anything to be finally determined. They did
20 agree to a three-week informal stay until this hearing or to
21 the day after this hearing.

22 But if Your Honor doesn't promptly rule, unless they
23 agree to further extend this formal stay, then they are going
24 to go off to the races, even though we believe that Your
25 Honor's decisions prevent them from suing on punitive damages



1 to the extent that it is the punitive damages that everybody
2 understands it to be, which I think was a bedrock principle of
3 their objection.

4 THE COURT: Okay. Let me hear from the other side.

5 MR. STEINBERG: I have some --

6 THE COURT: You have more?

7 MR. STEINBERG: I do have more.

8 THE COURT: Yeah, go ahead.

9 MR. STEINBERG: But I'll try to be brief.

10 THE COURT: Go ahead.

11 MR. STEINBERG: I was going to say besides these
12 opinions and the Chrysler Overton opinion, which Your Honor is
13 obviously familiar with, that the admitted facts from their
14 objection are that the McCalls are seeking punitives and not
15 compensatory damages under the Wrongful Death Act, and that the
16 punitive damage relief is solely based on Old GM conduct,
17 nothing to do with New GM. And that the sole basis for New
18 GM's responsibility to pay the Old GM punitive damage liability
19 is the contractual assumption that they believe exists under
20 Section 2.3(a)(9). And like the Reichwalds, they did receive
21 the order to show the December 2016 show-case order, and they
22 did not appeal the July 2017 opinion.

23 Now, they put a lot of emphasis on a fragment of a
24 sentence that appears once in Judge Gerber's decision to say
25 why that shouldn't be the law of the case. And the fragment is



1 in actions where the assertion against New GM, a compensatory
2 damage claim, is permissible. That's the clause that they're
3 looking at.

4 And we believe in our papers -- and I won't try to
5 regurgitate it unless Your Honor has a specific question -- I
6 think we give the context of how this decision was framed. I
7 think we talk about what is actually in the decision beside
8 that fragment of a clause and what's in the judgment. And all
9 of it is a much broader context.

10 THE COURT: The judgment doesn't have that language
11 though.

12 MR. STEINBERG: The judgment doesn't have that
13 language at all. And the language of the judgment is that
14 there is no punitive damages under other theories, such as by
15 operation of law, as a result of New GM's assumption of certain
16 liabilities for compensatory damages. That actual language
17 picks up the argument that they're making.

18 We also think, as a pure matter, the clause refers to
19 actions, not causes of actions. Actions, meaning the
20 litigation, and they are suing for compensatory damages under
21 other legal theories in that case so that technically they need
22 to fragment. But the reality is, is what Judge Gerber was
23 talking about, he was framing the issue as to whether under
24 2.3(a)(9) as a matter of contractual interpretation, was there
25 an assumption of punitive damages. That's what that language,



1 we believe, means.

2 And so therefore -- and we think that the judge's
3 decision was right on all fours. That is the law of the case,
4 and you could decide this on a contractual assumption basis.
5 What the punitive damages claims are that are blocked and what
6 are the quasi claims that could survive, maybe that's the thing
7 that you'll ask us to look at. But we think for what they're
8 arguing, under the Wrongful Death Act --

9 THE COURT: May I ask you something, Mr. Steinberg?
10 Let's assume that I agree with you and myself in the past, that
11 New GM did not assume liability for punitive damages, you know,
12 because it's law of the case or I reached exactly the same
13 decision that Judge Gerber did, reasoning through it, which I
14 think I did anyway. But let's say that I agree with all of
15 that. Okay. Do the McCalls get to argue to the Court in
16 Alabama that punitive damages under the Alabama Wrongful Death
17 Act don't mean punitive damages the way one would think of it?
18 Essentially, the Alabama attorney generals, is that an issue
19 for the state court in Alabama to decide?

20 MR. STEINBERG: I think if the issue is are they
21 really asserting punitive damages in the way that it's blocked
22 from the sale agreement, and they have to recognize that they
23 can't get that. If they wanted to argue that what I'm really
24 arguing is not punitive damages but something else, then I
25 think you're in the issue as to whether, as a gatekeeper, that



1 gets through the gate or whether that's something you could
2 determine.

3 Obviously Judge Bernstein had the issue teed up for
4 him, and so he determined it. And that's what's up on appeal.
5 But I can't say for you for sure that if someone wants to argue
6 that they're not presenting something that is barred by a
7 bankruptcy order but is asserting something totally different,
8 they can't go to another judge to say why that is right.

9 With saying that, I'm not sure I don't have the right
10 to come back and say, that's all a charade, and they're really
11 trying to circumvent your order.

12 THE COURT: Well, if you're saying it, say it now,
13 but --

14 MR. STEINBERG: Well, I think, Your Honor, the issue
15 that --

16 THE COURT: I mean, the pattern jury instruction that
17 you attached is -- I tried enough cases before I became a judge
18 where usually representing defendants, not always but usually
19 representing defendants where sometimes they got the -- have
20 the jury instructed on punitive damages. It sure looks like
21 that Alabama pattern jury instruction. It says not
22 compensatory, punitive punishment.

23 MR. STEINBERG: I think we're saying to you that if
24 they're going to be pursuing a claim under the Alabama Wrongful
25 Death Act and seeking what is labeled as punitive damages and



1 that is barred, then we would ask Your Honor to enter an order
2 that blocks that.

3 THE COURT: What sent me down the path of researching
4 Alabama law, which is not something I do all of the time, as to
5 what claims -- what tort claims, what contract claims can be
6 asserted, what's recoverable is -- and they do make this
7 argument, that that's a terrible thing to tell the McCalls they
8 can't recover for the death of their loved ones or whoever
9 they're representing. And I understand that argument.

10 MR. STEINBERG: I do too.

11 THE COURT: And that's what sent me down the road.
12 Well, is that really true? And so that sent me into looking
13 about what about breach of warranty, and sure enough, Alabama
14 Supreme Court has now said, I think quite clearly, that the
15 wrongful death statute doesn't apply to contract claims, only
16 to tort claims. And the survival statute also, that contract
17 claims survive, whether they've been brought before the
18 decedent -- before the person dies or after the person dies.
19 Contract claims survive. Breach of warrant contract claims
20 survive.

21 And so that then said, well, what damages are
22 recoverable for that. And so is it really true that if the
23 McCalls are barred by the Alabama Wrongful Death Act from
24 seeking punitive -- because it's quite clear that the statute
25 says only punitive damages, and the cases say only punitive



1 damages. So if they're really precluded from seeking recovery,
2 do they have another -- maybe they haven't asserted it in their
3 complaint. They didn't assert the breach of warranty.

4 If they had or if it could be amended to do that, are
5 they entitled to recover compensatory damage. Yes. Well, what
6 compensatory damages are recoverable? That, frankly, is not
7 addressed at all by the Alabama attorney general in Old Carco
8 in the appeal. And you know, if there is another avenue for
9 compensatory damages that are available to Alabama plaintiffs
10 that provide for compensatory damages, then the argument that,
11 oh, it's horrible that they cant seek punitive damages against
12 New GM, well, that's what got me headed down this road.

13 MR. STEINBERG: I understand.

14 THE COURT: Okay.

15 MR. STEINBERG: Two things about that, Your Honor. I
16 think you have perceived over the course of years that you've
17 been administering the GM case that GM's approach to personal
18 injury cases are different than economic loss cases. And --

19 THE COURT: I know you tried to mediate it. I know
20 you've settled most of them, and I commend that. I think
21 that's great, but --

22 MR. STEINBERG: And so what I wanted to say --

23 THE COURT: -- this one's not settled.

24 MR. STEINBERG: -- is no matter how you ruled on this
25 matter, if you ruled in our favor, we would still try to settle



1 the claims. We would still try to resolve the principle. I
2 know there is a part of their litigation is going forward, but
3 we understand the circumstance that you're grappling with,
4 which is why as an Alabama resident gets into an accident in
5 Alabama and dies, why are they not entitled to an assumed
6 liability when ever other plaintiff who got into an accident in
7 another state may haven't.

8 THE COURT: Well, they may have an assumed liability
9 for compensatory damages, but what --

10 MR. STEINBERG: Right.

11 THE COURT: -- how do you measure that? What's
12 recoverable? What's not recoverable?

13 MR. STEINBERG: Right. And --

14 THE COURT: So if Mr. Bell says his 35 years of
15 experience show -- or the 30 years of experience show -- I
16 don't mean to make you too old. Okay. Show that it
17 stops -- the compensatory damages stop at debt, well, you know.

18 MR. STEINBERG: And Your Honor, what I would say
19 about that is that, you know, after the sale agreement, there
20 were a lot of issues that needed to be addressed on a sort of a
21 fairness basis, that tried it to try to deal with it. So I
22 wanted to tell you that we were going to try to be fair no
23 matter what.

24 THE COURT: I'm sure. That's not -- I don't have to
25 deal -- I don't deal with that.



1 MR. STEINBERG: But if you had to deal with it on
2 pure legal principles, which is why we're here today as to what
3 is fair, there is on the flip-side something --

4 THE COURT: I'm not looking -- I'm looking at --

5 MR. STEINBERG: Okay.

6 THE COURT: I'm trying to figure out what the legal
7 principles require, Mr. Steinberg.

8 MR. STEINBERG: Okay. So if I had to address their
9 public policy concerns, there is nothing fair about having one
10 plaintiff with the right to seek punitive damages, and every
11 other plaintiff in every other state not being able to do it
12 based on some -- a judge -- and I'm not saying you would do
13 this, but a judge deciding that I'm going to rewrite the
14 contractual bargain that had been reached --

15 THE COURT: I'm not rewriting contractual bargains.
16 Okay.

17 MR. STEINBERG: Okay. So --

18 THE COURT: I've got to interpret the contractual
19 bargain. I think I've already done that.

20 MR. STEINBERG: Right.

21 THE COURT: You all are going to tell me why I
22 haven't or why what I did was wrong or --

23 MR. STEINBERG: And in terms of, you know, fairness,
24 Judge Gerber had to deal with some of these issues at the sale
25 decision, at the sale hearing where the pre-sale accident



1 plaintiffs came to him and said, why aren't you -- I was in an
2 accident; why isn't those claims being assumed; why is the
3 government only taking the post-sale accidents. So there were
4 lots of reasons why the government chose the line that it did.

5 But Judge Gerber had to write a decision whether it
6 was subject -- it was solely in the purchaser's discretion as
7 to which liabilities it was going to contractually assume or
8 not. And in his sale decision, he said that was New GM's call.
9 I'm not going to second guess what the think, what they thought
10 was important or not, and this was not part --

11 THE COURT: Okay. Let me hear from Mr. Snyder.

12 MR. STEINBERG: Okay.

13 THE COURT: So the first question, Mr. Snyder, is is
14 it correct that the McCalls are only seeking punitive damages,
15 punishment, not arguing that the Alabama wrongful death statute
16 doesn't mean what it seems to mean?

17 MR. SNYDER: Your Honor, I hate to hedge yes, but I
18 didn't want to -- after reading Your Honor's Reichwald -- the
19 August 20th decision where the Court said, I dealt with this a
20 month ago, I didn't want to be in a position where law of the
21 case was law of the case. In this Court, whatever happens at
22 the Second Circuit, happens at the Second Circuit.

23 We dropped the footnote, and I'd be glad to go into
24 it if the Court would permit why I respectfully believe the
25 decision in this Court in the July 2017 was wrongly decided.

1 But be that as it may, we're here now. Those decisions have
2 gone up.

3 I decided, after speaking with counsel, that we
4 wouldn't do it the way everyone else did and try to argue that
5 something that walks and talks and looks like a duck isn't a
6 duck. The Alabama statute is a punitive damage statute. The
7 pattern -- PJI says it's a punitive statute. The Supreme Court
8 has said more than once it's a punitive damage statute, as has
9 Judge Bernstein in Chrysler.

10 THE COURT: The Alabama attorney general
11 notwithstanding.

12 MR. SNYDER: The Alabama --

13 THE COURT: The statute says punitive damage is the
14 patterned jury instruction, clearly punitive, not compensatory.

15 MR. SNYDER: Correct, Your Honor. And his role is
16 different than mine. You know, I -- we're here today. We have
17 those decisions too by this Court, one by Judge Bernstein. As
18 a matter of fact, one by Judge Gerber and one by Judge Furman.
19 So it's baseball season. They're 5 and 0. I understand why
20 they didn't bring this three years ago. It was in mediation.
21 We're now three months before trial, and they have those
22 decisions under their belt.

23 But in my experience, Your Honor, Judge Gerber
24 chooses his words very carefully, having been on the wrong end
25 of many of his decisions. The language that Mr. Steinberg



1 cites to I don't think is surplusage. The decision says what
2 it said. I don't know why --

3 THE COURT: I understand your argument, and I
4 understand Mr. Steinberg's argument. But you can go ahead. I
5 don't want to cut you off.

6 MR. SNYDER: That's fine, Your Honor. I --

7 THE COURT: But I -- it's --

8 MR. SNYDER: It's clear.

9 THE COURT: I'm focused on what the language you
10 point to.

11 MR. SNYDER: Got it, Judge.

12 THE COURT: The only thing that I would say,
13 Mr. Snyder, is I'm not ruling from the bench. That's number
14 one. I read that contract over plenty of times.

15 MR. SNYDER: Right.

16 THE COURT: And you're fighting an uphill battle,
17 even if I were deciding it as a, you know, first instance.

18 MR. SNYDER: No, Your Honor, I hear you, but I think
19 the difference here is out because Alabama's a black swan,
20 right. You have a statute where they are the only state that
21 says, well, GM took wrongful death, they took products
22 liability, but in Alabama, the only wrongful death products
23 liability you can get is punitive damages. So they took
24 wrongful death, they took products liability, but they didn't
25 take punitive damages.



1 And so it's a matter of contractual interpretation,
2 which is where both you and Judge Gerber started. They took
3 something and they didn't take something, and at least for
4 Alabama it's mutually -- it's exclusive. It can't be --

5 THE COURT: No, It isn't mutually exclusive,
6 Mr. Snyder.

7 MR. SNYDER: Okay.

8 THE COURT: I explained how I headed down the road of
9 figuring out whether there was -- whether it was asserted here
10 or not or whether it could still be asserted or not, whether
11 there was an alternate route by which compensatory damages
12 could be sought by representatives of the deceased. And that's
13 what got me down the road of --

14 MR. SNYDER: And Your Honor --

15 THE COURT: -- contractual claims for breach of
16 warranty.

17 MR. SNYDER: And I meant to start there, Your Honor,
18 and two people died here. And I think that I appreciate the
19 Court is looking for, for lack of a better term, another way.
20 And --

21 THE COURT: I'm looking to see whether Alabama law
22 provides another way. I'm not looking to create out a whole
23 cloth another way.

24 MR. SNYDER: And I'm not suggesting you are, Your
25 Honor, but I do think that the federal framework that would



1 suggest that if you're injured, you get money, if you're killed
2 you don't, or if the accident is 50 miles to the west of
3 Mississippi, but the degree and size of the injury dictates
4 whether New GM is on the hook or not. I'm not arguing the
5 public policy. The Alabama AG did. I'm arguing as a matter of
6 contractual interpretation under New York law.

7 What does it mean when you have those results? What
8 do you -- when you have results where they said they're taking
9 wrongful death claims. I mean, if you're taking wrongful death
10 claims, you're taking wrongful death claims. I know the Court
11 disagrees. When I read that Judge Gerber, who in the footnote
12 in the response, they pointed out that no one knows better than
13 Judge Gerber what they were doing when they were quantifying
14 risk, and that's true. But that also, that sentence is in
15 there. If the judge didn't care --

16 THE COURT: I'm not creating -- look, Mr. Snyder, if
17 you think I'm going to create an exception for one state out of
18 the union and allow punitive damages to be recovered in Alabama
19 where it can't be in any other state, that's not happening.

20 MR. SNYDER: I wasn't suggesting that, Your Honor. I
21 was suggesting --

22 THE COURT: That's what you're asking for.

23 MR. SNYDER: Well, I'm asking to put Judge Gerber's
24 sentence in context. I know the Court said it wasn't in the
25 judgment. It wasn't in your 2017 decisions. Judge Bernstein



1 didn't mention it. But that doesn't mean it wasn't there. The
2 caption is the punitive damage issue. That was on Page 1 of
3 the decision.

4 THE COURT: I understand your argument --

5 MR. SNYDER: Okay.

6 THE COURT: -- quite clearly on that point.

7 MR. SNYDER: I understand, Your Honor. So
8 if -- well, if the Court is suggesting, and I'll take up the
9 suggestion, that we brief the issue or go back on the issue of
10 whether contract warranty claims survive --

11 THE COURT: It's not -- actually, I want to be clear,
12 and I think the Alabama Supreme Court has been clear, that they
13 have recognized implied warranties, not just expressed
14 warranties.

15 And I'm using the term -- I don't remember the words
16 in the decisions I read where there was fitness for the
17 intended purpose. I understand the Plaintiff's argument that
18 cars shouldn't be designed so that they explode, that the gas
19 tank is exposed. I remember the Pinto cases, for example.
20 Okay. Not -- that's not obviously my issue. Okay.

21 But Alabama, that -- you know, I've read eight
22 Alabama Supreme Court decisions that deal with some portion of
23 this area, the survival statute, the warranty versus tort,
24 what's covered by the Alabama wrongful death statute, tort
25 claims, not contract claims.



1 But the one thing I didn't find, and maybe there is a
2 straightforward answer, a clear answer that says it cuts off at
3 death. Although one of the Supreme Court cases I read affirmed
4 a judgment below where the jury was instructed, and you know,
5 the decedent lasted a few minutes after the accident, and the
6 jury returned a fairly substantial verdict for pain and stuff
7 and mental anguish. I read that as clearly open, no matter
8 what I do. I don't know. You, a state court judge will have
9 to interpret the complaint as to whether those are in the case
10 or not. Maybe they're not.

11 MR. SNYDER: Well, Your Honor, I understand from
12 Alabama counsel that both of the decedents lived for
13 approximately 30 minutes prior to death, which is horrible to
14 think about, so --

15 THE COURT: It was a horrible accident. I just, you
16 know --

17 MR. SNYDER: And so I don't know if there is a
18 Aquaslide exception, and I don't know if counsel. And we
19 certainly had not looked into the implied warranty that the
20 Court raises here and whether that survives.

21 THE COURT: I mean, part of the public policy
22 arguing, that's terrible. You're denying people that were
23 killed in Alabama the relief that's available to people
24 elsewhere in the country because Alabama decided as a matter of
25 policy to say punitive damages, not compensatory damages.



1 Okay.

2 Okay. I'm sorry. Go ahead.

3 MR. SNYDER: No, Your Honor. And I tried to stay
4 away from the public policy arguments. I stayed away from the
5 AG's argument. I tried --

6 THE COURT: You read the AG's brief.

7 MR. SNYDER: I did, Your Honor. I didn't agree with
8 it. But in this Court, it doesn't fly, quite frankly. I think
9 it's a very difficult --

10 THE COURT: I don't want to get sandbagged. Maybe
11 that's an overstatement because Mr. Steinberg will argue you
12 didn't raise the argument below. I shouldn't even consider it.
13 If I rule against you, which I haven't decided yet, but when
14 you get to a district judge and you argue, you get the Alabama
15 attorney general to file an amicus brief on the appeal if I
16 rule against you. So yes, I am going to require both sides to
17 submit additional briefs. There are a couple of issues that I
18 want to address.

19 Look, I'm very sympathetic to the plight of the
20 representatives of the deceased plaintiffs, if they lived the
21 30 minutes or not. The notion that Alabama law combined with
22 the prohibition on punitive damages prevents any recovery,
23 that's a pretty unsettling concept. It may be what the answer
24 is. It may not.

25 Go ahead with your argument.



1 MR. SNYDER: Your Honor --

2 THE COURT: I've read more than just your papers.
3 I've read lots of stuff.

4 MR. SNYDER: Your Honor, and I appreciate the Court's
5 thoughtful analysis. We laid out -- we kept it fairly simple.
6 Well, really three points. One is it's not law of the case,
7 and I hope that the Court doesn't find in light of the history
8 that we're stopped at the gate.

9 The second issue, and as we said in the footnote, is
10 that we believe that the Court's July 2017 decision was wrong
11 in a matter of law, and we put that in there.

12 Just as an aside, Your Honor, Mr. Steinberg and Judge
13 Furman rely on the Best Payphones case, Judge Bernstein's case.
14 The judge never got to the decision on the impact of Section
15 103(b) on Chapter 11. He said he may. The case was settled.
16 And so --

17 THE COURT: Mr. Snyder, I'm not sure I need to reach
18 that issue. I'm -- you know, judges get reversed, but judges
19 also decide things on alternate grounds. And I'm not sure that
20 I need to reach that as an alternate ground if I'm going to
21 rule against you, which I haven't decided that.

22 MR. SNYDER: I understand, Your Honor, but when I
23 hear Mr. Steinberg say, you know, if we're reversing the Second
24 Circuit, you know, it only applies to people that raise the
25 issue. So I want to make it clear that in our papers we raised



1 the issue that the July 2017 was wrong as a matter of law.

2 THE COURT: His argument is that you received -- the
3 order to show cause was served on you. It identified the
4 punitive damages. I understand you're arguing about what some
5 other Alabama person wanted to argue. I don't -- I really
6 don't think it was the same thing. And some other Court will
7 have to decide whether you were on notice, didn't object, and
8 therefore are barred -- you're bound by the decision language.
9 But I'm not -- that's not for me to decide.

10 MR. SNYDER: Understood, Your Honor, insofar as the
11 Court has stated it's read the papers. And again, thanking
12 Your Honor for looking at this maybe a different way than all
13 of the parties did. I have nothing further.

14 THE COURT: Okay. Thank you.

15 Briefly, Mr. Steinberg.

16 MR. STEINBERG: Briefly.

17 Your Honor, our papers cite, and I -- and you
18 probably have read the cases that courts struggled in certain
19 cases where there's a statute that says lack of municipality,
20 the TVA can't be sued for punitive damages, and does the
21 Alabama Wrongful Death Act kind of apply to sue a municipality.
22 And courts upheld -- Fifth Circuit, Eleventh Circuit, have said
23 that there is no punitive damage claim. And they basically
24 point to the Alabama legislature, who for years have been
25 said -- have been criticized saying, you need to broaden the



1 statute so that people don't have the liability. And that's
2 essentially the same rationale that Judge Bernstein did in the
3 Overton case.

4 THE COURT: Okay. Mr. Bell, I don't want to be
5 unfair to you to put you on the spot about this. And I
6 understand your position that the death cutoff future damages.
7 I'll use that term. It didn't cutoff damages for -- and I read
8 the Alabama cases on the saying of a breach of warranty claim
9 had been personal injury, compensable damages include pain and
10 suffering, mental anguish, all of that is potentially
11 recoverable in a breach of warranty claim. Is that correct?

12 MR. BELL: Yes. Yes is the short answer. There all
13 right three scenarios that play out under Alabama law. There
14 is a death where the tragic incident is instant.

15 THE COURT: Yes.

16 MR. BELL: Then there's one where there's a period of
17 survival. And then there's one where there's a period of
18 survival, and the lawsuit gets filed while the person is
19 surviving.

20 THE COURT: That's distinction I'm aware of.

21 MR. BELL: Okay. Okay. Right.

22 THE COURT: I've read those cases.

23 MR. BELL: When you brought up the survival statute,
24 that was those cases.

25 THE COURT: I've read the survival statutes.



1 MR. BELL: So it's just those two scenarios that are
2 at issue.

3 THE COURT: Okay.

4 MR. BELL: But here's the distinction. When there's
5 a period of survival, with the 31 years of experience, it's
6 always limited to the pain and suffering and mental anguish
7 during that period of survival. There's no compensatory damage
8 claim for lost income, lost wages. We've never had that under
9 Alabama law, only in personal injury cases.

10 THE COURT: Are there other kinds of damages? You're
11 an experienced lawyer who tries these cases. Are there other
12 kinds of damages that are cutoff by debt? So you said future
13 wages are cutoff by debt.

14 MR. BELL: That's a good -- actually, if somebody
15 sues for fraud and the lawsuit is pending, and then they pass
16 away, well then the administrator of the estate at that point
17 there. But that -- maybe that wasn't your question.

18 THE COURT: No, no, no. I just -- look, you've
19 acknowledged -- and you may argue when this case gets back that
20 they failed to plead breach of warranty. I don't know what
21 that's going to be. So just hypothetical, the case that
22 properly pled the contractual claim of breach of warranty and
23 sought compensatory damages, are there other categories of
24 damages that you believe are cutoff by death of the plaintiff?
25 So you've said that pain and suffering, mental anguish for the



1 period in which they survived. As I said, I read one case
2 where the poor person survived only minutes, frankly, and yet a
3 jury returned a verdict and got affirmed. Are there other
4 categories that you believe are cutoff by the death of the
5 plaintiff?

6 MR. BELL: Your Honor, you've hit on the distinction
7 because we've -- our practice is tort recovery is limited to
8 mental anguish, pain, and suffering. Now, if it were a breach
9 of contract claim, that -- you raise a very interesting issue.
10 And I leaned over to Josh to see if he could think of an
11 example of that either, and I think we're both having the same
12 experience.

13 THE COURT: Here's what I want done. And I'll tell
14 you what I want additional supplemental briefs on, unless your
15 colleague from Alabama wants to address any of the issues I've
16 talked about today.

17 MR. HAYES: No, Your Honor. It --

18 THE COURT: Just state your name when you go up.

19 MR. HAYES: Yeah, sure. Pleasure to be with you,
20 Your Honor. May it please the Court, Josh Hayes on behalf of
21 the McCalls. And it is a unique and dumbfounding issue. I
22 agree with Mr. Bell in theory that -- with what he's said. I
23 would like to take a fresh look in light of what the Court said
24 today, and we'll be doing that.

25 THE COURT: Mostly I'm asking questions, you know.



1 I -- okay. Thank you very much.

2 MR. HAYES: Thank you.

3 THE COURT: And welcome to New York.

4 MR. HAYES: Yeah.

5 THE COURT: All right. So I would like supplemental
6 briefs on two matters. I'd like counsel for each party to file
7 a supplemental brief addressing the arguments set forth in the
8 attorney general's amicus brief in Chrysler. And that amicus
9 brief is filed in 18-CV-11290, and it's Docket Number 16. I
10 think you indicated you both have seen it.

11 MR. SNYDER: Yes, Your Honor.

12 THE COURT: And the second thing I would like
13 addressed is assuming contractual claim for breach of warranty,
14 what is the measure of damages recoverable on such claims, and
15 what effect does the death of the -- I'll call them the injured
16 parties -- have on the recovery of damages.

17 I've asked a lot of questions specifically about
18 future earnings because that was -- sort of jumped out at me.
19 I read Alabama cases that deal with -- and I looked for the
20 pattern jury instructions, and I couldn't find them by just
21 hitting and clicking on Westlaw. They talk about them. I've
22 seen some of the jury instructions that have been given. They
23 were no surprise to me. I've seen them before when I used to
24 try cases.

25 But -- so that future earnings was one area. Are



1 there other areas or elements of damage that are cutoff by the
2 death by reason of the wrongful act.

3 Okay. So those are the two matters that I want
4 supplemental briefs. And I would like simultaneous briefs.
5 How much time do you want to do that?

6 MR. STEINBERG: Ten days okay with you guys?

7 MR. SNYDER: He's on vacation next week. Three weeks
8 good, Judge?

9 MR. STEINBERG: Your Honor, the only thing I'm --

10 THE COURT: They want to chart ahead with discovery.

11 MR. STEINBERG: Right. That's the only thing that I
12 would say is that if they're going to --

13 THE COURT: Agree to hold off on discovery
14 until -- on anything to do with punitive damages.

15 MR. STEINBERG: To do with damages, yes.

16 MR. SNYDER: Your Honor, part of the problem, we've
17 been discussing this. You know, the Court only sees what's in
18 front of them, I know. We have a trial date of September.

19 THE COURT: Okay.

20 MR. SNYDER: If we get -- if that's adjourned it's a
21 year, so we have co-counsel. We'll do it in two weeks, and
22 we'll stay for two weeks. He'll go on vacation and his
23 co-counsel --

24 MR. STEINBERG: I'm happy he's going to stay it, but
25 Your Honor --



1 THE COURT: I want a week after you turn in the
2 briefs. I mean, I don't --

3 MR. STEINBERG: I would like you to stay until the
4 judge decides the matter. And if the judge says he's going to
5 decide the matter there --

6 THE COURT: Let -- hold on. Mr. Snyder, all I can
7 tel you is I don't let things linger very long.

8 MR. SNYDER: I am fully aware. I read the Elliott
9 decision, which took about a day, so if the Court needs three
10 weeks --

11 THE COURT: Oh, no, if you're going to get your
12 briefs in in two weeks, I want at least a week after that --

13 MR. SNYDER: Until the Court decides, that's fine
14 with us, sir.

15 THE COURT: Okay. All right. And I'll -- I'm
16 mindful -- what's the trial date?

17 MR. HAYES: Your Honor, September 16th, I believe.

18 THE COURT: Okay. What is it that you want to get on
19 punitive damages? You read a financial report and --

20 MR. HAYES: I'm sorry? I --

21 THE COURT: What discovery is it that you want to
22 take on punitive damages? Every punitive damages that, years
23 ago, I used to try, they asked for financial statements.
24 They -- you're looking for the wealth of the defendant.

25 MR. HAYES: I was confused by this gentleman's --



1 THE COURT: Mr. Steinberg.

2 MR. HAYES: Mr. Steinberg, his staying discovery on
3 punitives because I don't know what he's talking about. We
4 have experts that are going to testify about the car and what
5 it -- went wrong. That's the only thing I'm going to get.

6 THE COURT: Mr. Bell, is there a real issue here?
7 Come on.

8 MR. BELL: I want to say welcome to Alabama. No,
9 that's the problem. You -- they're seeking discovery of the
10 defect of the design for which they're seeking punitive
11 damages. If the car is deemed to be defective, then they're
12 seeking to punish Chrysler -- I mean, GM.

13 THE COURT: No, I'm sorry. Mr. Bell, discovery about
14 the defect of the car is relevant to -- I don't view that as
15 punitive damages research. Okay.

16 You -- the case is going forward as to other
17 plaintiffs. There were two injured parties who lived, right?

18 MR. BELL: That's correct.

19 THE COURT: So the case is going forward. They want
20 their discovery. They want a complete discovery about the
21 defect. They're entitled to that as to the two who lived.

22 MR. BELL: No question about that.

23 THE COURT: Okay. So what's the -- the only
24 thing -- I'm sensitive to -- but then I started thinking about,
25 you know, when I used to handle punitive damage cases, they're



1 fighting about financial statements. Well, GM's a public
2 company. I'm --

3 MR. BELL: That is -- it's the defect stuff or the
4 defect research they're doing, but it is for both sides.

5 THE COURT: I'm not staying discovery about the
6 defect.

7 MR. BELL: Yes.

8 THE COURT: You've got to -- you agree you have to
9 try that anyway.

10 MR. BELL: We have, yes, for the other two, that's
11 correct.

12 THE COURT: So I'm not staying discovery about
13 defects. Okay. Does everybody understand what I'm saying on
14 this?

15 MR. BELL: Yes, Your Honor.

16 THE COURT: I misunderstood before.

17 MR. SNYDER: You'll go forward on the defect, but any
18 discovery on punitive damages will stay the decision.

19 MR. STEINBERG: By the way, I was confused about that
20 too, obviously. My information was different.

21 The only thing is, Judge, do you want to put a page
22 limit, or you don't care?

23 THE COURT: Yeah, I usually want a page limit, but --

24 MR. SNYDER: Twenty-five, thirty?

25 THE COURT: Twenty-five pages limit. Please try to



1 keep -- the shorter you keep it the better it is. Twenty-five
2 pages excluding table of contents and table of authorities.

3 MR. SNYDER: Will do, Your Honor, and two weeks.

4 THE COURT: Two weeks.

5 MR. SNYDER: Thank you again, Your Honor.

6 MR. STEINBERG: You could have taken three weeks if
7 you're going to review discovery going forward anyway, if you
8 would have wanted it, but it's up to you.

9 MR. SNYDER: Does the Court care -- if the Court
10 doesn't care and we're not staying discovery, three weeks would
11 be preferable, so it's four weeks or whatever you need, again,
12 if we're not -- that's fine.

13 THE COURT: Okay. I'm not staying discovery. Three
14 weeks from today for the supplemental briefs.

15 MR. SNYDER: Thank you, Your Honor.

16 THE COURT: Okay. Enjoy your vacation.

17 MR. BELL: Thank you, Your Honor.

18 MR. STEINBERG: Thank you, Your Honor.

19 THE COURT: Okay. Thanks. We're adjourned.

20 (Proceedings concluded at 4:03 p.m.)

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C E R T I F I C A T I O N

I, Lisa Luciano, court-approved transcriber, hereby
certify that the foregoing is a correct transcript from the
official electronic sound recording of the proceedings in the
above-entitled matter, and to the best of my ability.



LISA LUCIANO, AAERT NO. 327

DATE: June 1, 2019

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